

**OPINION**  
**76-53**

February 5, 1976 (OPINION)

Mr. F. John Marshall  
Assistant State's Attorney  
Grand Forks County  
Box 216  
Grand Forks, North Dakota 58201

Dear Mr. Marshall:

This is in reference to the question presented to this office concerning section 50-02-04 of the N.D.C.C. and its application to nursing homes. The problem, as we understand it, involves a situation in which an individual who is a resident of one county enters a nursing home in another county. At the time he enters the home he is receiving no public assistance but during his stay in the nursing home he becomes indigent and has no funds to pay for his care. The problem is which county is responsible, the county of original residence or the county in which the nursing home is located.

In a letter from Mr. Clarence O. Ohlsen, Director of the Grand Forks County Social Service Board, dated December 12, 1975, concerning this matter, Mr. Ohlsen indicates that in order to stop a lot of needless law suits in our District Courts, an Attorney General's opinion is needed as to how the law will be interpreted until such time as it may be changed by legislative enactment. We believe it is important to note that an opinion from this office will, as you know, not necessarily stop these law suits. Those counties who agree with the opinion of this office would probably adhere to same. However, those counties who might disagree with the opinion would be free to institute a law suit to have the question determined and, as you also know, while the courts may take cognizance of our opinion it is not binding upon the courts of this state.

We will, however, give our opinion of the matter as you have requested.

Section 50-02-04 of the N.D.C.C. provides:

"RESIDENCE IN COUNTIES - HOW GAINED. - If no type of public assistance or poor relief, whether county, state, or federal, has been received, residence in a county, for poor relief purposes, shall be gained as follows:

1. Each male person and each unmarried female over the age of eighteen years, who has resided one year continuously in any county in this state, shall be deemed to have residence in such county;
2. Each person who has resided one year continuously in the state, but not in any one county, shall have a residence in the county in which he or she has longest resided within such year;

3. Every minor not emancipated and settled in his own right shall have the same residence as the parent with whom he has last resided;
4. For the purposes of this section the time spent while receiving institutional care in any state licensed home for the aged, infirm, neglected or indigent shall not be included in the computation of time necessary to establish residence hereunder."

The determination of residency for these purposes is, in any given situation, a question of fact as well as of law. As we understand the problem presented in Mr. Ohlsen's letter, the problem does not arise in a situation in which a person already receiving assistance enters a nursing home in another county. In such instance the county from which he is receiving assistance would continue to be responsible pursuant to section 50-02-06 of the N.D.C.C. which provides:

"HOW RESIDENCE IN COUNTY LOST. - Each residence for poor relief purposes, when once legally acquired in any county in this state, shall continue until it is lost or defeated by acquiring a new residence in this state, or by voluntary absence, all former residence shall be defeated and lost. If within a year of removal, the county of former residence contributes to the poor relief of such person in the county to which he has moved, such absence from the county of former residence shall not be construed to be voluntary as that term is used in this section."

This office on February 17, 1958, in a letter addressed to Mr. Carlyle D. Onsrud, Executive Director of the Public Welfare Board, considered this question. In reply to that question this office stated:

"Homes for the aged are licensed by the Public Welfare Department and nursing homes are licensed by the State Health Department. You will note that Subsection 4 (of section 50-02-04) applies to persons receiving institutional care in any state licensed home for the aged, infirm, neglected, or indigent. It seems to us that this statute is sufficiently broad to apply to nursing homes. We cannot conceive of any person being an inmate in a nursing home and not falling within one of the following categories or classes, infirm, neglected or indigent persons. As we understand the situation, any home that has more than two unrelated nonambulatory patients must be licensed as a nursing home. Otherwise a license for a home for the aged suffices.

We therefore believe that Subsection 4 of Section 50-02-04 applies to patients in a nursing home."

On July 27, 1970, in an opinion addressed to Mr. Calvin N. Rolfson, Pembina County State's Attorney, this office considered the question of whether an individual who resides in a medical hospital licensed under authority of the State of North Dakota comes within the

provisions of Section 50-02-04 (4) of the N.D.C.C. for purposes of residence, i.e., is a medical hospital considered a facility involving "institutional care" and may a hospital be considered a "state licensed home for the aged, infirm, neglected, or indigent" to bring it under the provisions of Subsection 4 of Section 50-02-04. This office indicated that since a stay at a medical hospital is generally for a short term period and the stay at homes denominated for the "aged, infirm, neglected or indigent" or at so-called "nursing homes" is generally considered to be for a greater length of time, in the usual instance we would assume that the stay at a hospital would be considered a part of the time the person resided at the place where he resided immediately prior to his admission to the hospital. We also indicated this rule was not inflexible and that if a situation did arise where the hospital was actually acting as a home for the aged, infirm, neglected or indigent, and the patient was admitted for such purpose in a particular case the provisions of Subsection 4 of Section 50-02-04 of the N.D.C.C. would apply and the time the patient spent at the institution should not be included in the computation of time necessary to establish residence under Section 50-02-04. That opinion also made reference to the letter of February 17, 1958. A copy of the July 27, 1970, opinion is enclosed herewith.

On May 16, 1973, this office issued an opinion to Mr. T. N. Tangedahl, Executive Director of the Department of Social Services, holding that Chapter 50-02 applied for purposes of determining the county liable for reimbursing the Social Service Board of North Dakota for the county share of Aid to Families with Dependent Children, Aid to the Aged, Blind, or Disabled, and Medical Assistance. A copy of that opinion is enclosed herewith.

Subsection 4 of Section 50-02-04 became a part of the statute by virtue of the amendment of Section 50-02-04 in 1951. See Chapter 284, 1951 Session Laws. The provision has not been amended since that time and therefore the statute today is identical to the statute in effect at the time the opinions referred to above were issued.

We believe, however, that Section 50-02-04 (4) of the N.D.C.C. should be read in conjunction with Section 50-02-06, quoted above, in those instances in which the individual has acquired residence in one county prior to entering a nursing home in another county." Under a factual situation wherein a person who has residence in one county enters a nursing home in another county for more than temporary care, does not receive any public assistance and remains in that nursing home for more than a year, we believe a conclusion that such person has acquired a residence in the county in which the nursing home is located could be justified under the statutes. On the other hand, in those situations in which a person enters a nursing home in another county only for temporary care or receives assistance from his county of residence at the time of entering the nursing home or within one year of the time he enters the nursing home we believe a conclusion that such person has not acquired a residence in the county in which the nursing home is located is justified even though the person remains there for over a year.

As we noted at the beginning of this discussion, these questions necessarily involve factual situations which may be in dispute and

may be subject to settlement only by district court action pursuant to Section 50-02-08. In this respect, it is possible the opinion of this office will not stop law suits involving these matters.

Sincerely,

ALLEN I. OLSON

Attorney General